



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202 – 2733

AUG 11 2017

Ms. L'Oreal Stepney, P.E.  
Deputy Director - Office of Water  
Texas Commission on Environmental Quality (MC-158)  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Variance for City of Lumberton TPDES Permit No. WQ00011709-002 NPDES. TX0092801)

Dear Ms. Stepney:

This is in response to the Texas Commission on Environmental Quality's (TCEQ) letter dated August 2, 2017, which requested a temporary variance to the *Texas Surface Water Quality Standards* (TSWQS). The variance applies to the dissolved oxygen criteria for Boggy Creek. The Environmental Protection Agency (EPA) has completed its review of this request which was submitted for review and approval, as required by 40 CFR 131.20.

The City of Lumberton discharges treated wastewater to an unnamed ditch, thence to Boggy Creek, which is a tributary of segment 0607 – Pine Island Bayou. Appendix A of the *Texas Surface Water Quality Standards* (TSWQS) includes a high quality aquatic life designated use for segment 0607. A high quality aquatic life use is presumed for Boggy Creek, following §307.4(h)(3) of the TSWQS. The dissolved oxygen criteria to support a high quality life use include a 24-hour mean value of 5.0 mg/L and an 8-hour minimum value (within 24-hours) of 3.0 mg/L.

In the 2014 TSWQS, TCEQ adopted revised dissolved oxygen criteria for Boggy Creek, based on a use attainability analysis. The proposed dissolved oxygen criteria of 1.5 mg/L (24-hour mean) and 0.5 mg/L (24-hour minimum) are under review by EPA. The temporary variance allows the TPDES permit to be issued, while EPA completes review of the revised standards.

The proposed permit for the City of Lumberton's facility contains the variance to the dissolved oxygen criteria and interim effluent limitations. During the three-year variance period, the permittee will be required to meet water quality-based effluent limits for carbonaceous biochemical oxygen demand, total suspended solids and total ammonia, as included in the previous permit. If the revised dissolved oxygen criteria are not approved by EPA, effluent limitations based on the current criteria for the high aquatic life use will be included in the next permit.

Section 7 of the Endangered Species Act states that "all Federal agencies shall...utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered and threatened species" and "each Federal agency shall insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or

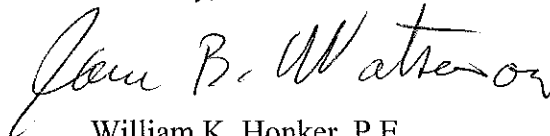
threatened species.” EPA has determined that approval of the temporary variance to the dissolved oxygen criteria of 5.0 mg/L (24-hour average) and 3 mg/L (24-hour minimum) will have no effect on federally-listed threatened and endangered species or on critical habitat.

The State Attorney General has previously certified that the variance provision in the Texas standards was duly adopted pursuant to State law. Public participation was completed through the comment period on the proposed permit. The federal regulation for public participation (40 CFR 25.5(b)) states that public notification must occur 45 days prior to the date of a hearing. It also states that the notification period may be reduced to 30 days when EPA determines that there are no complex or controversial matters to be addressed. EPA has decided that the 30-day notification period is sufficient for this variance request, as the temporary change to standards only applies to one waterbody. No comments on the proposed permit or the variance were received.

EPA considers the issuance of the temporary variance, in conjunction with the public participation process completed by TCEQ, to be consistent with and satisfy, the procedural requirements of 40 CFR 131.20. EPA is approving the variance identified above, pursuant to section 303(c) of the Clean Water Act and the implementing regulations at 40 CFR part 131.

If you or your staff have any questions in this matter, please call me at (214) 665-7101 or contact Diane Evans in the Watershed Management Section at (214) 665-6677.

Sincerely,

A handwritten signature in black ink, appearing to read "William K. Honker". The signature is fluid and cursive, with the first name "William" and last name "Honker" clearly legible.

William K. Honker, P.E,  
Director  
Water Division

ecc: Sonia Bhuiya, TCEQ - Wastewater Permits Section (MC-148)  
Jason Godeaux, TCEQ - Standards Group (MC-234)